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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD C. REYNOLDS,

Defendant and Appellant.

B291397

(Los Angeles County
Super. Ct. No. SA097427-

01)

APPEAL from a judgment of the Superior Court of Los Angeles County, Keith L. Schwartz, Judge. Reversed and remanded.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, Gregory B. Wagner, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Ronald C. Reynolds appeals from the trial court's judgment imposing sentence following its order revoking Reynolds's probation. Reynolds seeks reversal on the ground that there is insufficient evidence in the record to support the finding that his probation violation was willful. He additionally contends that his placement at a transitional living facility violated the terms of the plea agreement, which required placement in residential treatment, and requests specific performance of the plea agreement.

We reverse the judgment and remand for further proceedings consistent with our disposition.

FACTS

On February 22, 2018, Reynolds entered a plea of not guilty. At the hearing, defense counsel advised the court that Reynolds was "really in need of a mental health dual-diagnosis type program," and requested that the court continue the hearing for counsel to negotiate with the district attorney and arrange enrollment in a residential treatment program. Reynolds asked when he was to have his court date, and the trial court responded, "March 20, so we can try to get you in a program." Reynolds agreed to waive time for this purpose.

At the change of plea hearing on March 20, 2018, the trial court advised Reynolds, "We are going to take a plea today, put off sentencing. You have some psych issues. You are currently on parole. If there is a program that they want to put you in, the D.A. has agreed and I have agreed to put you in the program instead of jail. [¶] Is that your understanding of the

disposition?” Reynolds responded that it was. Reynolds pleaded no contest to a single count of grand theft (Pen. Code, § 487, subd. (a)),¹ and admitted, for housing purposes in state prison (as opposed to county jail) only, that he suffered a prior strike under the three strikes law (§§ 667 subd. (a), 1170.12, subd. (b)).

At the subsequent sentencing hearing, held April 4, 2018, pursuant to the plea agreement, imposition of sentence was suspended, and Reynolds was ordered to serve 84 days in county jail and awarded 42 days of actual custody credit and 42 days of conduct credit. He was also ordered to spend 365 days in a residential treatment program in lieu of additional jail time. The agreement provided that Reynolds would be conditionally released to his parole agent for transportation. It further provided that if Reynolds left placement without authorization a warrant would issue for his arrest. Reynolds was required to obey all laws and orders of the court and rules and regulations and instructions of the program. The trial court issued an order conditionally releasing Reynolds to parole agent Marcos Rivera for transportation to, and placement at Mariposa House at 225 N. Mariposa in Los Angeles, and requiring that the court be notified if Reynolds left the program without permission so that a no-bail warrant could be issued.

On April 11, 2018, the trial court received a letter from Rivera, advising the court of the following: Rivera picked Reynolds up from the Los Angeles County Jail on April 5, 2018, and drove him to Fresh Start recovery program. Program director Gabriela Hernandez conducted intake. On April 6,

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Rivera received a call from Hernandez informing him that Reynolds had walked away from the program.

The trial court revoked Reynolds's probation and issued a bench warrant on April 13, 2018. Reynolds was arrested on April 20, 2018.

A contested probation revocation hearing was held on June 7, 2018. Rivera testified that on April 5, 2018, he transported Reynolds to Fresh Start. Rivera originally planned to transport Reynolds to Mariposa House, which was "a structured program particularly focused on the treatment of drug and alcohol abuse." Due to a one-day delay in his release, however, Reynolds lost his placement at Mariposa House. Although Rivera knew that the conditional release was for transportation to a residential treatment program, and Fresh Start was not such a program, he took him to Fresh Start because "the bed was gone, I had to put him somewhere. I didn't want to let him be transient."

On the drive to Fresh Start, Reynolds told Rivera that he had a substance abuse problem, "[s]o he needed really [sic] help with that." Rivera assured Reynolds that as soon as he could arrange other housing he would, but that he would have to place him in Fresh Start temporarily. Rivera advised Reynolds that he must stay at the facility, and that if he did not the judge would send him to jail or prison.

When they arrived, Hernandez explained the Fresh Start rules and policies to Reynolds, including that he could not leave the premises without permission. On April 6, Hernandez called Rivera and told him that Reynolds was "a little antsy, having a hard time." Rivera then spoke to Reynolds, and told him that after 60 to 90 days, he might be able to arrange to have Reynolds transferred, but that for now Reynolds "[had] to do part of the

program showing an effort on your part.” An hour later Hernandez called Rivera again to tell him that Reynolds had walked away.

Reynolds testified that he did not learn he was not going to be placed in a residential treatment program until Rivera drove him to Fresh Start on April 5, 2018. Rivera told him that he would work on getting him into a residential treatment program, but in the meantime he would need to stay at Fresh Start. Later that afternoon Reynolds saw a baggie of methamphetamine on the floor. When Reynolds talked to the staff about it, he learned that Fresh Start was not a drug treatment program, and not “a court-mandated program.” Fresh Start did not perform urine tests to check for narcotics. A staff member told Reynolds “Well, if somebody has got drugs, they’ve got drugs.” The staff member told Reynolds that Fresh Start wouldn’t test for narcotics unless there was reason to believe a resident was in possession of drugs. Reynolds told the staff member drugs had been found, so there was a reason to test. Fresh Start did not test anyone for drugs.

The next day, Reynolds noticed that his roommate was acting strangely. Reynolds called Rivera and told him he could not stay at Fresh Start. Rivera told him, “try to stick it out, but do what you have to do.” Reynolds told Hernandez that he was an addict and the environment at Fresh Start was stressful for him. He needed residential treatment. She told him to get his things and go. Reynolds left Fresh Start and enrolled himself in Clare Foundation by that evening.² On April 20, 2018, Reynolds learned there was a warrant for his arrest and turned himself in.

² Reynolds testified that a Clare Foundation employee came to an earlier court hearing to confirm his enrollment, but was not able to attend the contested hearing due to travel.

Reynolds testified that neither Rivera nor Hernandez gave him permission to leave Fresh Start, but Reynolds did not think he was violating the terms of his parole by leaving. Reynolds explained, “technically, I did walk away, but I walked away, to my thinking, in good faith to continue to do what I told the courts I was going to do and complete this thing to get this thing off my record and not go to prison.” He continued, “I asked for residential treatment because I got a problem. I got psychological problems, and I got drug problems.”

The prosecutor argued that, even assuming everything Reynolds said was true, Reynolds knew that the placement was only temporary, but still purposefully left Fresh Start without permission, which violated the terms of his probation.

Defense counsel argued that the court’s order directed Rivera to transport Reynolds to Mariposa House, not “any other program that where [*sic*] parole can drop him off for a few days.” Reynolds needed a residential treatment program, and that was what he asked the court for. Even if Rivera was doing his best, it was not what was ordered by the court. Reynolds should not have been released from jail until he could be placed in a residential treatment program, in conformance with the court’s order.

The trial court ruled that Reynolds had violated the terms of his probation. The court explained that everyone understood that it could be difficult to get placement in a residential treatment program, so when there was not a place to put Reynolds, Rivera did the best that he could “as a temporary stopgap measure.” The trial court expressed its opinion that Reynolds’s decision to leave Fresh Start did not demonstrate even

“minimal concern” about “how serious you are about being in a program.”

Reynolds asked how he violated the agreement “when the agreement was to go to a residential treatment center, and I was not put in a residential treatment center.” “I signed a deal for a residential treatment center.” The trial court told Reynolds that he could make that argument on appeal. Reynolds asked to have it noted in the record that he signed a plea agreement to enter a residential treatment center, but was never taken to a residential treatment center.

The court revoked probation and imposed the high term of three years in state prison.

DISCUSSION

Reynolds contends that the state breached the terms of the plea agreement by placing him in a facility that did not provide residential substance abuse treatment. The people argue that Reynolds waived the argument, but that, regardless, the state did not breach the plea agreement, because placement in a residential treatment program was not an express term of the agreement. Alternatively, the People argue that the state was excused from complying with the agreement because performance was “made ‘impracticable without [its] fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made.’” We reject the People’s arguments.

Legal Principles

“A plea agreement “is a tripartite agreement which requires the consent of the defendant, the People and the court.” [Citations.] “Acceptance of the agreement binds the court and the parties to the agreement.” (*People v. Feyrer* (2010) 48 Cal.4th 426, 436–437.)” (*K.R. v. Superior Court* (2017) 3 Cal.5th 295, 303–304.)

“A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.] ‘The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636.) If contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) On the other hand, “[i]f the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.” (*Id.*, § 1649; see *AIU [Ins. Co. v. Superior Court]* (1990) 51 Cal.3d 807,] 822.)’ [Citation.] ‘The mutual intention to which the courts give effect is determined by objective manifestations of the parties’ intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. (Civ. Code, §§ 1635–1656; Code Civ. Proc., §§ 1859–1861, 1864; [citations].)’ [Citations.]” (*People v. Shelton* (2006) 37 Cal.4th 759, 767.)

“[D]ue process applies . . . to the procedure of accepting the plea . . . [and] to implementation of the bargain itself.” (*People v. Mancheno* (1982) 32 Cal.3d 855, 860 (*Mancheno*).) “A violation of

a plea bargain is not subject to harmless error analysis.” (*People v. Walker* (1991) 54 Cal.3d 1013, 1026, overruled on another ground by *People v. Villalobos* (2012) 54 Cal.4th 177.) “Because a court can only speculate why a defendant would negotiate for a particular term of a bargain, implementation should not be contingent on others’ assessment of the value of the term to defendant.” (*Mancheno, supra*, 32 Cal.3d at p. 865.) “It necessarily follows that violation of the bargain by an officer of the state raises a constitutional right to some remedy.” (*Id.* at p. 860.)

“The goal in providing a remedy for breach of the bargain is to redress the harm caused by the violation without prejudicing either party or curtailing the normal sentencing discretion of the trial judge. The remedy chosen will vary depending on the circumstances of each case. Factors to be considered include who broke the bargain and whether the violation was deliberate or inadvertent, whether circumstances have changed between entry of the plea and the time of sentencing, and whether additional information has been obtained that, if not considered, would constrain the court to a disposition that it determines to be inappropriate. Due process does not compel that a particular remedy be applied in all cases. [Citation.] [¶] The usual remedies for violation of a plea bargain are to allow defendant to withdraw the plea and go to trial on the original charges, or to specifically enforce the plea bargain. Courts find withdrawal of the plea to be the appropriate remedy when specifically enforcing the bargain would have limited the judge’s sentencing discretion in light of the development of additional information or changed circumstances between acceptance of the plea and sentencing. Specific enforcement is appropriate when it will implement the

reasonable expectations of the parties without binding the trial judge to a disposition that he or she considers unsuitable under all the circumstances.” (*Mancheno, supra*, 32 Cal.3d at pp. 860–861.)

Analysis

We agree with Reynolds that the state violated the terms of his plea agreement when it released him to a transitional living facility rather than a residential treatment program, as required by the terms of the plea agreement.

Forfeiture

Preliminarily, Reynolds did not forfeit the argument that the state violated the terms of the plea agreement, as the People assert. Reynolds specifically asked the trial court to note in the record that he signed a plea agreement to enter a residential treatment program, but was never taken to a residential treatment center. We consider his request to be a sufficiently clear statement of his claim that residential treatment was a term of the plea agreement with which the state failed to comply.

Express Term of the Plea Agreement

We reject the People’s argument that the state did not violate the plea agreement because placement in a residential drug treatment program was “not an explicit part of the plea agreement,” and that instead, the parties agreed that Reynolds would be placed in a “general” program.

The plea agreement, the conditional release order, and the discussions between the court and the parties at the hearings demonstrate that Reynolds was in need of substance abuse and mental health treatment and specifically bargained for a residential treatment program. Prior to taking the plea, defense counsel informed the court that Reynolds was “really in need of a mental health dual-diagnosis type program.” The court agreed that this would be appropriate. Reynolds waived time to have placement in a residential treatment program arranged.

The plea agreement explicitly states under the heading “TERMS OF ANY PLEA BARGAIN” “[defendant] to be placed in residential treatment by Parole/DMH [defendant] will be conditional [*sic*] released to Parole for transportation.” In conformance with the plea, the court’s conditional release order specifically released Reynolds to Mariposa House, which Reynolds’s parole officer knew to be “a structured program particularly focused on the treatment of drug and alcohol abuse.”

At the probation revocation hearing, the trial court acknowledged that substance abuse treatment was a term of the plea agreement: “The parole agent was contacted, and he indicated he had no objection to a drug program. So with that understanding, the plea was entered.” Rivera testified that he understood placement at Fresh Start did not conform with the court’s order, and advised Reynolds that the placement was temporary. The trial court also viewed the placement as “a temporary stopgap measure.”

In light of the language of the plea agreement and conditional release order and the circumstances surrounding the making of the bargain, we conclude that it was the mutual intent of the parties that Reynolds be placed in residential treatment,

and that the state's action of removing him from custody and placing him in a transitional living facility that did not provide treatment was a breach of the plea agreement.

Impracticability or Impossibility of Performance

We also reject the People's argument that the state was excused from complying with the plea agreement because it was impossible to place Reynolds at Mariposa House.

In *People v. Jackson* (1981) 121 Cal.App.3d 862, 869 (*Jackson*), the only criminal case on which the People rely in support of this argument, the Court of Appeal held that the trial court acted in excess of its jurisdiction by approving a plea agreement for an 11-year sentence in a second degree murder case, when the only authorized sentence at the time was imprisonment for 15 years to life. Thus, there were no circumstances under which the agreement could have been legally enforced. (*Ibid.*) In this case, there was no evidence that performance was impossible, let alone illegal. Although there was no available space in Mariposa House, the plea agreement provided for placement in a residential treatment program. The release order specified Mariposa House, but the plea agreement contained no such restrictions, and it is clear from the record that the mutual intent was to provide Reynolds with residential treatment, not limited to a specific facility. There was no evidence regarding whether an attempt was made to place Reynolds in a comparable program in conformance with the plea agreement, so we cannot conclude that performance was impossible, or even impracticable, even if we were to conclude that the state's performance could be excused.

With respect to excusal, the People appear to suggest that, because placement in Mariposa House was no longer available, the state was free to instead do the best that it could under the circumstances. In *Jackson*, the Court of Appeal held that the appropriate remedy when it is impossible to perform a term of a plea agreement is to allow the defendant to withdraw his plea. (*Jackson, supra*, 121 Cal.App.3d at p. 869.) The case does not support the assertion that the state was permitted to simply do its best, however well-intentioned.

In these circumstances, we must conclude that the state did not adhere to the terms of a significant promise it made to induce the plea, and due process requires that Reynolds be afforded an appropriate remedy.³ (*Santobello v. New York* (1971) 404 U.S. 257, 261; *Mancheno, supra*, 32 Cal.3d at p. 860.) With respect to the remedy, in this case specific performance will not bind the trial court to a disposition that it considers inappropriate, or otherwise impinge on its sentencing discretion, nor will it prejudice the People. We cannot fully redress the harm caused by breach of the plea agreement, however—Reynolds was ordered to spend 365 days in residential treatment in lieu of jail time, and has now served over a year in prison. Although the harm to Reynolds would not be completely redressed by specific performance, it appears to us that he may still find that remedy preferable to withdrawing his plea. We therefore conclude that the appropriate remedy is to give Reynolds a choice between

³ Because we conclude that the state breached the terms of the plea agreement by releasing Reynolds to a facility that did not provide residential treatment, it necessarily follows that Reynolds could not have violated the terms of his probation by leaving.

specific performance of the plea agreement and withdrawal of his plea.

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court for further proceedings. On remand, the trial court must allow Reynolds the opportunity to either withdraw his plea or to have the terms of the plea agreement specifically enforced. If Reynolds declines to withdraw the plea, the court must enforce the terms of the plea agreement.

MOOR, J.

We concur:

RUBIN, P. J.

BAKER, J.